to the communication itself. *Mercer v. State,* 40 Fla. 216; *Scott v. Commonwealth,* 94 Ky. 511. But the greater number of authorities hold that if the letters are not voluntarily delivered by the wife, the privilege does not attach and they are admissible. *State v. Hoyt,* 47 Conn. 540; *Geiger v. State,* 6 Neb. 545. In direct conflict with the principal case is the rule laid down in *People v. Hayes,* 140 N. Y. 484. It was there stated that if a written confidential communication is given to a third party, by the one to whom it is addressed, the protection is waived and it may be treated like any other communication. In Massachusetts it is held, that the privilege of the statute as to confidential communications between husband and wife extends only to private conversations and not to written communications. *Commonwealth v. Caponi,* 155 Mass. 534.

EVIDENCE—TELEPHONE CONVERSATION—ADMISSABILITY.—BARRETT ET AL. V. MAGNER ET AL., 117 N. W. 245 (MINN.).—Where a witness secured telephone connection with the place of business of a party and was told that he was not in but would be called, and soon after another voice answered and a conversation took place similar to a personal conversation between the same parties a few days before, *held,* that such conversation was admissable, even though the identity of the party called to the 'phone was not established by his admission or by a recognition of his voice.

It is an accepted rule that a telephone conversation is admissable in evidence. *Thompson & W. Co. v. Appelby,* 5 Kan. App. 680; *Murphy v. Jack,* 142 N. Y. 215, the fact of its being uncertain and unreliable not excluding it, but merely affecting the weight attached to it. *Shawyer v. Chamberlain,* 13 Ia. 742. But it is always necessary to lay a foundation for the admission of such evidence, by showing the identity of the person answering. *Mo., P. & R. Co. v. Heidenheimer,* 82 Tex. 195. To this end, testimony as to the admission of his identity by the party answering or, as to the recognition of his voice, is considered the proper means. *Gall v. Wolliver,* 103 Ill. App. 71. Where the identification of the office or place of business amounts to an identification of the person, it is a sufficient foundation to show that a connection was secured with such office or place of business. *Guest v. Hannibal & St. J. R. Co.,* 77 Mo. App. 258. *Contra: Kimbank v. Ill., C. & E. Co.,* 103 Ill. App. 632.

INNKEEPERS—LIABILITY FOR OFFENSIVE ACTS OF EMPLOYEES.—DE WOLF V. FORD, 112 N. Y. SUPP.—*Held,* that an innkeeper is liable to a guest for the offensive acts of an employee, and that the plaintiff may recover compensatory damages for injuries to her feelings and personal humiliation suffered.

An old English case laid down the rule that an innkeeper is an insurer of the goods and chattels of his guest but not of his person. *Calye's Case,* 8 Coke 32. And in the scarcity of decisions upon this point, a California court has relied upon this case for the common law rule, and has held that an innkeeper is not bound to protect his guests from acts of violence by his servant or other persons, if he does not negligently employ or admit persons of known violent and disorderly propensities who will probably

assault and maltreat his guests. *Rahmel v. Lehndorf,* 142 Cal. 681. And Tennessee holds similarly that an innkeeper is not an insurer of the persons of his guests, but is merely to exercise reasonable care that his guest may not be injured by anything happening by his negligence. *Weeks v. McNulty,* 101 Tenn. 495. Nebraska, however, refuses the early English rule, and holds that the liability of an innkeeper for the safety of his guest should be the same as that of a carrier to a passenger. *Clancy v. Barker,* 98 N. W. 440. In several cases, not strictly analogous to the case in point but similar thereo, there is a tendency to hold that an innkeeper is liable for injuries to the person of the guest through acts of the servant. *Rommel v. Schambacher,* 120 Pa. St. 579; *Curran v. Olsen,* 88 Minn. 307.

MANDAMUS — TO ORDINARY — FUNDS WRONGFULLY DISBURSED.— HUTCHESON V. MANSON, ORDINARY, 62 S. E. 189 (GA.).—*Held,* that mandamus will lie to compel an ordinary to pay over money which by law it is his duty to pay for certain purposes, out of a particular fund even though that fund, which has come into his hands, has all been wrongfully disbursed and hence, is not in his possession.

A ministerial officer, into whose hands specific funds are intrusted, may be compelled by mandamus to disburse them in the manner prescribed by law. *People v. Edmonds,* 15 Barb. 529; *Ingerman v. State,* 129 Ind. 225. The duty is imperative upon him, not discretionary. *Baker v. Johnson,* 41 Me. 15; *People v. Fogg,* 11 Cal. 358. And the fact that the money authorized by legislature to be applied to one contingency has been exhausted in paying another, is no excuse. *People v. Stout,* 23 Barb. 338. There are decisions, however, holding that mandamus can be granted only to the extent of the funds remaining in the officer's hands, although he may have improperly disposed of a part of them which he should have turned over. *Duval County Com'rs v. Jacksonville,* 36 Fla. 196; *Board of Education v. Boyd,* 58 Mo. 276.

NEGLIGENCE—DANGEROUS PREMISES—LIABILITY OF OWNER.—CAHILL V. E. B. & A. L. STONE & CO. ET AL., 96 PAC. 84.—*Held,* an owner of premises, over which there is a path used by the public with his knowledge and consent, who places a dangerous and concealed obstruction in the path, is liable for injuries sustained thereby to a person using the path.

The same rules apply to this case as to the *"Turn-Table Cases." Stout v. Railroad Co.,* 17 Wall. 657; *Koons v. Railway Co.,* 65 Mo. 592. The owner of a dangerous place or machine must guard the public from the danger attachel to it. *Young v. Harvey,* 16 Ind. 314. In *Beck v. Porter,* 68 N. Y. 283, it was held that an owner of land may be liable, who makes an excavation so near the highway as to be dangerous to travelers. And some cases hold that it makes no difference how great the distance is from the highway if the excavation is dangerous to the public. *City of Norwich v. Breed,* 30 Conn. 535. The cases *contra* rest on the theory that the owner owes no duty to the public. *Cusick v. Adams,* 115 N. Y. 55.

OFFICERS—RESIGNATION—WITHDRAWAL.—STATE V. MURPHY, 97 PAC. 391 (NEV.).—*Held,* that a sheriff who presented to the board of county